

Settlement and Release Agreement

Chie M. Handy v. N.C. Department of Commerce, Division of Employment Security,
13 OSP 18126

SETTLEMENT AND RELEASE AGREEMENT

The North Carolina Department of Commerce, including its Division of Employment Security (together, "Respondent"), enters into the following settlement and release agreement ("Agreement") with Chie Handy ("Petitioner" and, together with Respondent, the "Parties").

WHEREAS, Petitioner is currently employed within DES in Position Number 60077961 in the classification of Administrator III with a pay grade of 72; and

WHEREAS, on or about June 18, 2013 and August 6, 2013, respectively, Petitioner applied for promotions within DES to Position Numbers 60077974 and 60078268 (together, "Positions" unless otherwise specified); and

WHEREAS, on September 26, 2013, Petitioner filed a petition for contested case in the North Carolina Office of Administrative Hearings ("OAH") with the caption *Chie M. Handy v. N.C. Department of Commerce, Division of Employment Security*, 13 OSP 18126 ("Petition"), in which Petitioner alleged Respondent unlawfully failed to promote her into the Positions; and

WHEREAS, the Parties desire to enter into this Agreement to resolve the Petition and any claims related to the Positions in return for the mutual releases and covenants contained herein;

NOW THEREFORE, in order to avoid further controversy, expense and inconvenience, the Parties have agreed upon a full and final settlement of all matters related to the Petition and the Positions and hereby memorialize the terms and conditions of their Agreement as being:

1. New Classification, Pay Grade and Salary. Upon the written approval of an executed copy of this Agreement by the North Carolina Office of State Human Resources ("OSHR"), Respondent will promote Petitioner from her current Position Number 60077961 to the classification of Management Engineer I with a pay grade of 74. . Petitioner will continue to perform the same duties she performs in her current position. Effective that same date, Respondent will increase Petitioner's salary of FORTY-SIX THOUSAND SIX HUNDRED SIXTY-SEVEN DOLLARS AND NO CENTS (\$46,667.00) to FIFTY EIGHT THOUSAND DOLLARS AND NO CENTS (\$58,000.00).

2. Payment of Back Pay and Attorney's Fees. Upon the approval of an executed copy of this Agreement in writing by OSHR, Respondent will pay Petitioner a payment of THIRTY THOUSAND DOLLARS AND NO CENTS (\$30,000.00) (the "Payment"), representing back pay and attorney's fees and costs. Respondent will make the Payment by issuing an IRS Form 1099 to the law firm of Allen, Pinnix & Nichols, P.A., the taxpayer identification number of which is [REDACTED]. With regard to the Payment, Allen, Pinnix & Nichols, P.A. and/or Petitioner shall be responsible for paying all taxes and other withholdings required by state and federal law. Petitioner acknowledges and agrees that Respondent is not responsible for paying any such taxes or other withholdings and is not required to make any contribution to the State of North Carolina Retirement System ("Retirement System") that

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corresponds to or represents any part of the Payment. Petitioner acknowledges and agrees that the Payment includes full compensation for all of her attorney's fees and costs arising out of the Petition. In order for Petitioner to receive the Payment, Petitioner's counsel must execute and provide for Respondent's approval an affidavit, detailing the hours worked on litigation of the Petition, the hourly rate and all costs.

3. Petitioner's Voluntary Dismissal of the Petition. Petitioner will execute the Notice of Voluntary Dismissal With Prejudice attached to this Agreement as Exhibit A, which Respondent will file with the OAH after Petitioner receives the payment of back pay.

4. Release. In return for the consideration recited in this Agreement, Petitioner forever discharges and waives all federal and state claims relating to her employment (including any claims for attorney's fees, costs, back pay or benefits) that she may have as of the date of this Agreement against Respondent and all past or present agents and employees of the State of North Carolina and Respondent, in both their official and individual capacities, including all claims related to the Petition or the Positions and any claim that Respondent is required to make a contribution to the Retirement System based on the Payment. Petitioner is not, however, waiving: (a) any rights she may have to seek to receive or to actually receive benefits under applicable workers' compensation statutes and to challenge the validity of this Release insofar as it purports to waive any such rights; (b) any rights she may have to pursue claims which by law cannot be waived by signing this Release and to challenge the validity of this Release insofar as it purports to waive any such rights; and/or (c) any rights she may have to enforce this Release.

As part of this release, Petitioner will not sue Respondent on any matters relating to her employment arising before the execution of this Agreement, either in her individual capacity or as a party with others. If Petitioner violates this provision, she will: (i) return the complete Payment received under this Agreement and Respondent's obligations under this Agreement will be null and void, except to the extent that the release set forth above would be invalidated; and (ii) indemnify Respondent for all expenses that it incurs in connection with Petitioner's violation of this provision. Petitioner acknowledges that such violation constitutes sufficient irreparable harm and injury that would justify the issuance of a restraining order.

5. Older Worker's Benefit Protection Act Release. In compliance with the Age Discrimination in Employment Act ("ADEA") as amended by the Older Workers Benefit Protection Act of 1990 ("OWBPA") (collectively, "those Acts"), Petitioner acknowledges that the waiver contained in Paragraph 4 above includes waiver of her rights under those Acts and releases Respondent from liability under those Acts. Petitioner acknowledges that this waiver is knowing and voluntary. Petitioner waives her right to have twenty-one (21) calendar days to consider this Agreement. She acknowledges that she has read and understands all of the terms and conditions of this Agreement. Petitioner warrants and represents that she has either consulted with an attorney concerning all of the terms and conditions of this Agreement prior to executing this Agreement or has willingly chosen to waive her right to consult with an attorney concerning the terms and conditions of this Agreement. Petitioner acknowledges that she has received consideration under the terms of this Agreement in exchange for her waiver of her rights under the ADEA and the OWBPA. Petitioner shall have seven (7) calendar days to revoke

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Chie M. Handy v. N.C. Department of Commerce, Division of Employment Security,
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this Agreement following execution of the same, and this Agreement is effective only if there is no revocation by Petitioner during that seven (7) day period of time.

6. No Admission of Liability. The parties understand and agree that this Agreement represents a compromise of disputed claims and is intended merely to terminate any and all claims and avoid further litigation among the parties. Entry into this Agreement is not to be construed as an admission of liability and Respondent expressly denies it is liable to Petitioner under any theory of law for any of Respondent's actions.

7. Full Cooperation. The Parties agree to cooperate fully to execute any and all supplemental documents necessary to effectuate this Agreement, and to take all additional actions that may be necessary to give full force and effect to the terms of this Agreement.

8. Non-Disparagement: The Parties shall not make any statements or release any information not legally required to be released that disparage or impugn the reputation of one another.

9. Governing Law and Forum: This Agreement shall be governed by, construed and enforced in accordance with laws of the State of North Carolina, and the place, situs and forum of this contract shall be Wake County, North Carolina, where all matters relating to the validity, construction, interpretation and enforcement shall be determined.

10. Severability: If any of the provisions of the Agreement are determined to be invalid or unenforceable, that provision so determined shall be severable from the other provisions of the Agreement, and the Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been included herein.

11. Entire Agreement. This Agreement contains the entire agreement between the Parties and there are no understandings or agreements, verbal or otherwise, regarding this settlement except as expressly set forth herein.

12. Review & Approval by OSHR. The Parties confirm their understanding that this Agreement is subject to approval by OSHR, in accordance with 25 N.C.A.C. 1B .0436.

IN WITNESS WHEREOF, this Agreement is executed in duplicate originals as indicated below.

This the 2nd day of April 2014.



CHIE HANDY
Petitioner

Settlement and Release Agreement

Chie M. Handy v. N.C. Department of Commerce, Division of Employment Security,
13 OSP 18126

This the 29 day of April 2014.

A handwritten signature in black ink, appearing to read "Sharon Decker", written over a horizontal line.

SHARON DECKER

Secretary of the North Carolina Department of Commerce

Settlement and Release Agreement

Chie M. Handy v. N.C. Department of Commerce, Division of Employment Security,
13 OSP 18126

APPROVED:

This the 29th day of April 2014.

A handwritten signature in black ink, appearing to read "C. Neal Alexander Jr.", written in a cursive style.

C. Neal Alexander Jr.
Director, Office of State Human Resources

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13OSP18126

CHIE M. HANDY
Petitioner

v.

DEPARTMENT OF COMMERCE, DIVISION
OF EMPLOYMENT SECURITY
Respondent

**VOLUNTARY DISMISSAL WITH
PREJUDICE**

Having resolved with Respondent the issues which prompted the filing of the petition for a contested case hearing in the above-captioned matter, and pursuant to Rule 41(a)(1) of the North Carolina Rules of Civil Procedure, Petitioner hereby voluntarily dismisses this matter with prejudice.

This the 29th day of April 2014.

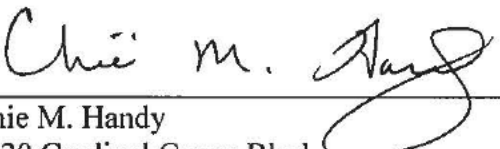

Chie M. Handy
5420 Cardinal Grove Blvd.
Raleigh, NC 27616

EXHIBIT A

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (this "Agreement") is made and entered into this 27th day of January 2017 by and between the North Carolina Department of Commerce ("Commerce") and ZM INDY, Inc. d/b/a *INDY Week* ("Plaintiff", and collectively with Commerce, the "Parties").

Background Statement

Plaintiff filed suit against John E. Skvarla, III, as Secretary of the North Carolina Department of Commerce, on or about November 1, 2016 seeking production of certain documents from Commerce as well as attorneys' fees. Commerce disputed any liability. Such action was captioned *ZM INDY, Inc. d/b/a INDY Week v. John E. Skvarla, III, as Secretary of the North Carolina Department of Commerce*, 16 CVS 013439 (the "Action").

Commerce and Plaintiff have agreed to compromise and settle the matters, claims and controversies between them by Commerce's payment to Plaintiff of One Thousand, Nine-Hundred Fifty Dollars (\$1,950) and by the mutual release of all claims involved in the Action by all Parties. The Parties have agreed to compromise and settle these matters in the interests of avoiding further costly and time-consuming litigation, and nothing contained herein is to be construed as an admission of liability by any Party.

NOW, THEREFORE, in consideration of the premises, the releases and the obligations created herein, as well as other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties do hereby for themselves, their successors and assigns, agree as follows:

1. **Payment from the DOC.** Upon the full execution of this Agreement, Commerce shall pay to Plaintiff, through its attorneys, the sum of One Thousand, Nine-Hundred Fifty Dollars (\$1,950). Payment shall be made payable to "Stevens Martin Vaughn & Tadych, PLLC Trust Account."

2. **Dismissal With Prejudice.** Within five (5) business days following the confirmed negotiation of Commerce's payment referred to in paragraph 1. above, Plaintiff, through its attorneys, shall enter and take a dismissal with prejudice of all claims made in the Action. The Parties hereto acknowledge and agree that all Parties to the Action shall bear their own costs, expenses and attorneys' fees arising out of the

Action and that no Party shall seek to recover taxable or other costs from any other Party following the entry of the aforesaid Dismissal With Prejudice.

3. **Mutual Releases.**

(a) Commerce hereby releases and discharges Plaintiff, including its officers, directors, agents, attorneys, independent contractors, sub-agencies, employees, successors and assigns, from any and all causes of action, suits, claims, demands, liabilities and obligations whatsoever, in law or in equity, whether the same or whether the facts on which the same may be based are now known or unknown, which it ever had, now has or hereafter can, shall or may have arising out of the matters embraced by the Action.

(b) Upon receipt and successful negotiation of the payment described above, Plaintiff hereby releases and discharges John E. Skvarla, III, and Commerce including their officers, directors, agents, attorneys, independent contractors, sub-agencies, employees, successors and assigns, from any and all causes of action, suits, claims, demands, liabilities and obligations whatsoever, in law or in equity, whether the same or whether the facts on which the same may be based are now known or unknown, which it ever had, now has or hereafter can, shall or may have arising out of the matters embraced by the Action.

(c) These releases shall not affect any Party's rights arising out of this Agreement, including the right of any Party to bring an action to enforce another Party's performance under this Agreement. Further, these releases shall not affect any Party's claims or defenses in any other dispute between them whether asserted or unasserted including, but not limited to, those claims and defenses asserted in News and Observer, et al v. McCrory, et al., 15 CVS 9591 (Wake County).

4. **Disputes Arising Hereunder.** Any dispute of any type or description arising out of this Agreement, including any Parties' performance under this Agreement, shall be resolved by the Superior Court of Wake County, North Carolina. All Parties to this Agreement acknowledge and agree that they are subject for all purposes to the *in personam* jurisdiction of the Superior Court of Wake County, North Carolina and waive any and all objections as to the venue of an action filed in that Court seeking the enforcement of any of the terms of this Agreement.


5. **Controlling Law.** This Agreement shall be governed by and interpreted in accordance with the law of Commerce of North Carolina.

6. **Miscellaneous.** All of the Parties to this Agreement acknowledge and agree that they have been represented by counsel of their own choosing in connection with this Agreement and its execution by them, or, in the alternative, have had a full opportunity to retain and consult with counsel in connection with those matters if they so chose. The Parties also acknowledge and agree that they have signed this Agreement freely and voluntarily, after full opportunity to review it and to obtain advice from legal counsel.


7. **Duplicate Originals.** The Parties agree that this Agreement may be executed in duplicate originals and that each such executed document shall constitute an executed original of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed under seal as of the day and year first written above.

NORTH CAROLINA DEPARTMENT OF COMMERCE

By:  (SEAL)
(signature)
Name: David Efird
(print name)
Title: Acting General Counsel
Date: 1/27/17

ZM INDY, INC. D/B/A INDY WEEK

By:  (SEAL)
(signature)
Name: Jeffrey C. Billman
(print name)
Title: Editor in chief
Date: January 27, 2017

SETTLEMENT AND RELEASE AGREEMENT

The North Carolina Utilities Commission and the North Carolina Department of Commerce, including their agents, employees and officers (altogether, "Respondents" and, separately, "Utilities" and "Commerce"), enter into the following settlement and release agreement ("Agreement") with Bruce G. Ramaekers ("Petitioner" and, together with Respondents, the "Parties").

WHEREAS, Utilities employed Petitioner as a Transportation Utilities Analyst until June 5, 2014, when Petitioner's employment was terminated; and

WHEREAS, on September 3, 2014, Petitioner filed a petition for contested case in the North Carolina Office of Administrative Hearings ("OAH") with the caption *Bruce Ramaekers v. North Carolina Department of Commerce, North Carolina Utilities Commission*, 14 OSP 06725 ("Petition"); and

WHEREAS, in lieu of termination, Petitioner is willing to resign his employment effective June 5, 2014, and Utilities is willing to permit Petitioner to do so; and

WHEREAS, in return for the mutual releases and covenants contained herein, the Parties desire to enter into this Agreement to resolve the Petition, all claims related to Utilities' employment of Petitioner and all claims related to Commerce's participation in or joint relationship (if any) with Utilities in such employment.

NOW THEREFORE, in order to avoid further controversy, expense and inconvenience, the Parties have agreed upon a full and final settlement and release of all matters related to the Petition, all matters related to Utilities' employment of Petitioner and all matters related to Commerce's participation in or joint relationship (if any) with Utilities in such employment, and the Parties hereby memorialize the terms and conditions of their Agreement as being:

1. Settlement Payments

In full satisfaction of all claims Petitioner releases in Paragraph 4 below and in consideration for Petitioner's other promises and covenants in this Agreement, Respondents will pay Petitioner the sum of \$250,000.00 (TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS). This payment to Petitioner personally will be subject to appropriate income and employment tax withholdings required by state and federal law and will be paid after this Agreement and any other applicable supporting paperwork have been approved by the North Carolina Office of State Human Resources and the North Carolina Office of State Budget Management and approved and processed by the North Carolina Office of State Controller.

Additionally, Respondents will pay Petitioner's counsel (Law Offices of Michael C. Byrne, Tax Identification No. [REDACTED], 150 Fayetteville Street, Suite 1130, Raleigh, NC 27601) the sum of \$15,000.00 (FIFTEEN THOUSAND DOLLARS AND NO CENTS). This

Settlement Agreement

*Bruce Ramaekers v. North Carolina Department of Commerce,
North Carolina Utilities Commission, 14 OSP 06725*

payment to Petitioner's counsel will not be subject to tax withholdings by Respondents, and Petitioner and Petitioner's counsel assume full responsibility for all federal or state taxes that may be owed and all reporting requirements that may be required for this payment.

As part of the two payments in this Paragraph 1, the Parties shall not be required to make employee retirement contributions to the Retirement Systems Division of the North Carolina Department of State Treasurer or to make payments for retroactive reinstatement to the North Carolina State Health Plan.

2. Resignation

Petitioner will resign his employment with Utilities effective June 5, 2014, providing with this signed Agreement a letter addressed to Utilities Chairman Edward S. Finley stating only the following:

Dear Chairman Finley:

I resign my employment with the North Carolina Utilities Commission effective June 5, 2014.

Sincerely,

Bruce G. Ramaekers

3. Removal of Termination Letter and Other Related Discipline

Respondents shall remove from Petitioner's personnel file the June 5, 2014 termination letter, all documents incorporated by reference in or attached to that termination letter, Petitioner's internal responses or replies to or internal agency appeals from such documents and from the termination letter and any employment action forms related to Petitioner's termination.

4. Releases

In return for the consideration recited above, Petitioner forever discharges and waives all federal and state claims, known or unknown, that he may have as of the date of this Agreement against Utilities, Commerce and the State of North Carolina (including any claims he has under the Petition and any claims for attorney's fees or legal costs) and, in both their official and individual capacities, all of their past or present agents, employees and officials.

Petitioner acknowledges that this discharge and waiver for consideration complies with and includes his knowing and voluntary waiver of his rights under the Age Discrimination in

Settlement Agreement

*Bruce Ramaekers v. North Carolina Department of Commerce,
North Carolina Utilities Commission, 14 OSP 06725*

Employment Act, as amended by the Older Workers Benefit Protection Act of 1990. Petitioner has 21 calendar days to consider this Agreement but can execute it sooner than the expiration of this period. Petitioner warrants and represents that he has read, reviewed and consulted with an attorney concerning all of the terms and conditions of this Agreement prior to executing it. Petitioner shall have seven (7) calendar days to revoke this Agreement following its execution, and the Agreement is effective only if Petitioner does not revoke it within this period.

5. No Admission of Liability

The Parties understand and agree that this Agreement represents a compromise of disputed claims and is intended merely to terminate any and all claims and avoid further litigation among the parties. Entry into this Agreement is not to be construed as an admission of liability by any Party, and the Parties expressly deny they have committed any wrongdoing, and all Parties agree that they are not liable to one another under any theory of law for any of their actions.

6. Petitioner's Voluntary Dismissal of the Petition

In consideration of, contingent upon and pursuant to the representations of Respondents regarding the execution of this Agreement, Petitioner voluntarily dismissed the Petition on March 4, 2015.

7. Reemployment

Petitioner will not reapply for or accept employment with Utilities, the North Carolina Utilities Commission Public Staff or Commerce (including any Commerce divisions and the boards and commissions under Commerce). Petitioner is free to apply for and accept employment with other North Carolina state or local agencies, boards or commissions.

8. Severability

If any of the provisions of the Agreement are determined to be invalid or unenforceable, that provision so determined shall be severable from the other provisions of the Agreement, and the Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been included herein.

9. Governing Law and Forum

The Parties agree that this Agreement shall be governed by, construed and enforced in accordance with laws of the State of North Carolina and that the place of this contract, its situs

Settlement Agreement
*Bruce Ramaekers v. North Carolina Department of Commerce,
North Carolina Utilities Commission, 14 OSP 06725*

and forum shall be Wake County, North Carolina, where all matters relating to the validity, construction, interpretation, and enforcement shall be determined.

10. Full Cooperation

The Parties agree to cooperate fully to execute any and all supplemental documents necessary to effectuate this Agreement and to take all additional actions that may be necessary to give full force and effect to the terms of this Agreement.

11. Entire Agreement

This Agreement contains the entire agreement between the Parties and there are no understandings or agreements, verbal or otherwise, regarding this settlement except as expressly set forth herein.

By the signatures below, the Parties indicate that they have read, understand, and agree with the terms and conditions stated in this Agreement, and by their signature they acknowledge the agreement and that in signing this Agreement they intend to be legally bound by it.

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Settlement Agreement

*Bruce Ramaekers v. North Carolina Department of Commerce,
North Carolina Utilities Commission, 14 OSP 06725*

This the 15 day of April 2015.

PETITIONER

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BRUCE G. RAMAEKERS

Petitioner

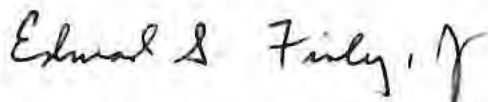
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Settlement Agreement

*Bruce Ramaekers v. North Carolina Department of Commerce,
North Carolina Utilities Commission, 14 OSP 06725*

This the 30th day of April 2015.

RESPONDENT NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, reading "Edward S. Finley, Jr." with a stylized flourish at the end.

EDWARD S. FINLEY, JR.
Chairman of North Carolina Utilities Commission


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Settlement Agreement

*Bruce Ramaekers v. North Carolina Department of Commerce,
North Carolina Utilities Commission, 14 OSP 06725*

This the 30th day of April 2015.

RESPONDENT NORTH CAROLINA DEPARTMENT OF COMMERCE



JOHN E. SKVARLA, III
North Carolina Secretary of Commerce

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Settlement Agreement

*Bruce Ramaekers v. North Carolina Department of Commerce,
North Carolina Utilities Commission, 14 OSP 06725*

PETITIONER'S COUNSEL



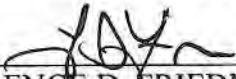
MICHAEL C. BYRNE
Michael C. Byrne, PC
Wachovia Capitol Center
150 Fayetteville Street
Suite 1130
Raleigh, NC 27601

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Settlement Agreement

*Bruce Ramaekers v. North Carolina Department of Commerce,
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RESPONDENTS' COUNSEL



TERENCE D. FRIEDMAN,
Special Deputy Attorney General
N.C. Department of Justice

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is entered into this 21st day of December 2015, by and between Yolande Fennell-Hargrove ("Ms. Fennell-Hargrove") and the North Carolina Department of Commerce.

RECITALS

WHEREAS Ms. Fennell-Hargrove has been employed by North Carolina Department of Commerce since 1994 and filed an EEOC Charge concerning her employment on November 18, 2014 (433-2015-00372) and said charge was transferred to the North Carolina Office of Administrative Hearings Civil Rights Division (15-CRD-0372). Prior to a decision being issued by the North Carolina Office of Administrative Hearings, the parties have agreed to a settlement.

WHEREAS the parties each desire to settle fully and finally all of the differences between them on the terms and conditions set forth in this Agreement, which all parties acknowledge and represent to be fair, reasonable, adequate and in their mutual best interests; and

WHEREAS the parties have compromised and settled their differences upon the terms set forth herein.

IT IS AGREED AS FOLLOWS:

1. Ms. Fennell-Hargrove will henceforth be employed with North Carolina Department of Commerce as Reemployment Services Coordinator under the supervision of Danny Giddens. In the event that Mr. Giddens is no longer employed as the Executive Director of Operations, Ms. Fennell-Hargrove will be supervised by the ES Manager II (or equivalent position) who replaces Mr. Giddens. Ms. Fennell-Hargrove,

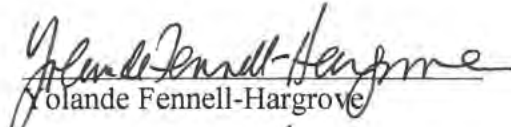
however, will not be supervised by Diane Smith. Ms. Fennell-Hargrove's new job description is attached as Exhibit A hereto.

2. Ms. Fennell-Hargrove will withdraw EEOC Charge No. 433-2015-00372 and its corresponding charge with the Office of Administrative Hearings (15-CRD-0372) (collectively referred to as "the Charges").
3. The Performance Improvement Plan ("PIP") issued to Ms. Fennell-Hargrove on June 1, 2015, will continue with her new supervisor for a period of three (3) months from the date of this Agreement. At that time, if Ms. Fennell-Hargrove has complied with the terms of the PIP to the satisfaction of her new supervisor, the PIP will be cancelled.
4. Ms. Fennell-Hargrove, being of lawful age, for and in consideration of the terms described above and mutual promises contained in this Agreement, hereby releases North Carolina Department of Commerce, and all past or present agents and employees of the State of North Carolina and the Department, in both their official and individual capacities, from and against all liabilities, promises, controversies, damages, causes of actions, charges, and expenses of any kind or nature from the beginning of her employment until the effective date of this Agreement, including all claims related to the Charges, and waives all federal and state claims relating to her employment.
5. This waiver expressly includes any rights or claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act, and any other state or federal act related to or purported to relate to Ms. Fennell-Hargrove's employment to the date of execution of

this Agreement. This release does not apply to any claims for accrued or vested benefits that may now or hereafter be due to Ms. Fennell-Hargrove under any employment benefit plan maintained by the North Carolina Department of Commerce or the State of North Carolina.

6. The parties understand and agree that this Agreement represents a compromise of disputed claims and is intended merely to terminate any and all claims and avoid further litigation among the parties. Entry into this Agreement is not to be construed as an admission of liability and the Department expressly denies it is liable to Ms. Fennell-Hargrove under any theory of law for any actions.
7. The persons signing this Agreement represent that they have full authority and representative capacity to execute this Agreement and that this Agreement constitutes the valid and binding obligations of Ms. Fennell-Hargrove and North Carolina Department of Commerce. This Agreement shall be binding upon and inure to the benefit of the assigns, heirs, executors and administrators of the parties.
8. Both Ms. Fennell-Hargrove and the North Carolina Department of Commerce have been advised of the legal and practical effects of this Agreement. The parties agree to be legally bound by its terms by his/her/its own free will, without promises or threats or the exertion of duress; provided that nothing herein shall be construed as a waiver of any rights that may arise after the effective date hereof.
9. Each party agrees to prepare and execute all documents that may be necessary or desirable to effectuate the purpose of this Agreement, including but not limited to duplicate copies of this Agreement.
10. Each party shall bear its own attorney's fees and costs.

The undersigned state that they have carefully read this Release and Settlement Agreement, they understand its terms, and they sign it freely.


Yolande Fennell-Hargrove

Date: 12/14/15


North Carolina Department of Commerce

Date: 12/21/2015

NC Commerce Division of Workforce
Solutions

Confidential Offer of Settlement of Questioned WIOA Costs

January 12, 2018

CONFIDENTIAL OFFER

January 12, 2018

Mr. Chris May, Executive Director
Cape Fear Council of Governments
1480 Harbour Drive
Wilmington, NC 28401

RE: Letter Agreement for Determination of Questioned WIOA Costs

Dear Mr. May,

In accordance with the federal Workforce Innovation and Opportunity Act (WIOA) and implementing regulations, states are required to address the failure of a local workforce area grantee to comply with the applicable uniform administrative requirements found in the WIOA, Office of Management and Budget Uniform Guidance, and the Code of Federal Regulations. When the state determines that a local workforce area grantee is not in compliance with any of these provisions, the state must require corrective action to achieve compliance.

As stated in our Initial Determination letter dated August 23, 2017, the Office of Internal Audit (OIA) identified procurement practices that were not in compliance with the WIOA grant agreement, applicable laws and policies. OIA also identified internal control weaknesses that resulted in WIOA fund expenditures being charged to the WIOA grant that are not in accordance with federal, state, and local law and policies. These initial questioned costs total \$606,507.59.

During the Final Determination process there is an opportunity for an informal resolution of the questioned costs. As a result of informal resolution negotiations we have been able to reach a settlement of the matters identified in the OIA Audit and in our Initial Determination letter. I have set forth the terms of our agreement below and I request that you sign this letter below to acknowledge your acceptance of the settlement terms and return a signed original of this letter to me.

The terms of the agreement between the NC Department of Commerce, Division of Workforce Solutions (DWS) and the Cape Fear Council of Governments (Cape Fear) are as follows:

Conflict of Interest, Audit Finding #1

Questioned Costs are Allowed

When made aware of the conflict of interest outlined in the OIA Audit, Cape Fear took immediate remedial action. Mr. Craig Umstead has resigned from his positions on the Workforce Development Board and has disassociated himself from Cape Fear. The parties agree that the questioned costs concerning the Conflict of Interest Audit Finding are determined to be allowed.



Prepaid Rent for Idle Facility, Audit Finding #2 Questioned Costs are Allowed

The parties disagree on the application of federal cash management rules to the prepayment of rent for the leased space at 1994 South 17th Street, Wilmington, N.C. It is agreed that Cape Fear will withdraw its request to further modify the Audit Findings contained in the OIA Final Audit. Cape Fear further agrees that, henceforth, it will only request advances limited to the minimum amounts needed for prepayment and the advances will be timed to be in accordance with the actual, immediate cash requirements of the non-federal entity in carrying out the purpose of the approved program or project. The parties agree that the questioned costs for the Prepaid Rent for Idle Facility Audit Finding are determined to be allowed.

**Insufficient Documentation for Paid Invoices,
Audit Finding #4**

Pay- \$12,827.00 in Disallowed Costs

Checks for WIOA expenditures were identified as having insufficient documentation by OIA, lacked evidence of management approval or lacked sufficient documentation to allow a reviewer to be able to discern if the expenditures should have been charged to the WIOA grant. The parties agree that the expenditures are disallowed costs.

Insufficient Documentation for Travel, Audit Finding #5

Pay- \$807.87 in Disallowed Costs

Checks associated with travel expenses identified by OIA lacked management approval or lacked sufficient documentation to allow a reviewer to discern if the travel expenses were proper and should have been charged to the WIOA grant. The parties agree that the expenditures are disallowed costs.

**Insufficient Documentation for Business Card,
Audit Finding #6**

Pay- \$8,955.93 in Disallowed Costs

Business card expenditures identified by the OIA did not show evidence of required approval, had no associated purchase order when required and had inadequate documentation to allow a reviewer to discern whether the expenditures were proper under WIOA. The parties agree that the expenditures are disallowed costs.

Summary Total Disallowed Costs

Pay- \$22,590.80

Cape Fear agrees to repay the \$22,590.80 in disallowed costs from non-federal funds in a single lump sum payment by check to DWS on or before February 15, 2018.

Cape Fear further agrees to review, revise, and implement the Corrective Action Plan that was submitted to DWS on December 2, 2016. Cape Fear will work with the DWS technical assistance team to ensure that the plan is aligned with federal, state, and local policies and that all items in the plan are implemented in a reasonable time.



Federal regulations specify that Cape Fear is entitled to a hearing to contest the final determination of questioned costs. As a condition of this settlement, Cape Fear agrees to waive its right to appeal this determination of disallowed costs in a hearing held before a hearing officer designated by the NC Department of Commerce as provided in the federal regulations.

Cape Fear further agrees that this Letter Agreement for Determination of Questioned WIOA Costs between DWS and Cape Fear does not preclude further findings by the N.C. State Auditor or USDOL that additional questioned WIOA costs are disallowed costs that must be repaid with non-federal funds. Cape Fear agrees that it shall remain solely liable for any disallowed WIOA costs determined by the N.C. State Auditor or USDOL and Cape Fear agrees to indemnify and hold DWS harmless from any liability for the disallowed WIOA costs.

This Letter Agreement represents a compromise settlement of disputed claims concerning the questioned costs previously identified in the Initial Determination letter dated August 23, 2017. The parties have reached this settlement in good faith and in the best interests of the public whom they serve. In order to resolve the matters in dispute without further administrative processes, expense and delay, the undersigned, acting with the authority of their respective organizations, have caused this Letter Agreement to be executed below.

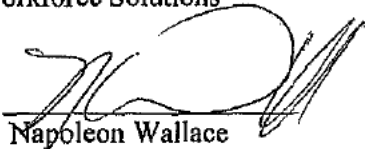
Sincerely,



Napoleon Wallace
Deputy Secretary

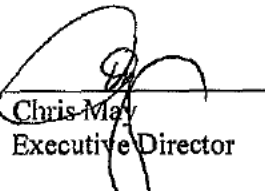
North Carolina Department of Commerce
Division of Workforce Solutions

APPROVED:


Napoleon Wallace
Deputy Secretary

Cape Fear Council of Governments

APPROVED:


Chris May
Executive Director

cc: Daniel L. Giddens, Acting Assistant Secretary, DWS
Catherine Moga Bryant, Deputy Assistant Secretary, DWS
Mark Edmonds, Chief Operating Officer, DWS
Beth Coberly, Director of Performance and Accountability, DWS
Kevin Butterfield, Attorney, DWS



MEMORANDUM OF SETTLEMENT AGREEMENT

North Carolina Department of Commerce, Division of Employment Security v. Douglas W. Lee t/a Lee Farms
Docket No. TAX-3837

Douglas W. Lee t/a Lee Farms (the "Employer") and the North Carolina Department of Commerce, Division of Employment Security (the "Division"), in order to avoid further controversy, expense, and inconvenience have agreed to settle the matters pertaining to the Employer's liability for unemployment insurance tax, interest and penalties for the audit period beginning with first quarter 2009 through fourth quarter 2011. The Division and the Employer have also agreed to settle this matter for the quarters beginning first quarter 2012 through fourth quarter 2014. Collectively the two periods will be referred to as the "settlement period." The Division and the Employer hereby memorialize the terms and conditions of their Agreement as being:

1. The Employer is a farm and has been operational since the mid-1970s. There are five (5) identified classifications of workers on the farm, which are as follows:

1. Crew members paid directly by the Employer but supplied to the farm by a crew leader with the proper certification.
2. Office workers
3. Processing plant workers
4. Truck drivers
5. Stragglers—individuals hired by the Employer to perform work on the farm that do not fit within one of the other categories.

During the Employer's years of operation, the Employer has paid the workers and issued them Form 1099-MISCs at the end of the year.

2. The Employer agrees he was a liable employer pursuant to N. C. Gen. Stat. § 96-8(5)n. for any and all individuals employed on the farm during the settlement period as office workers, processing plant workers, truck drivers, and stragglers. The Employer agrees that for quarters after the settlement period, the Employer will apply the Employment Security Law to workers in these classifications of workers and any other workers subject to the Employment Security Law.

3. The Employer disputes liability for crew members supplied by crew leaders to perform services on the farm based on information provided him by other government agencies. Specifically, the Employer has always paid crew members and then issued Form 1099-MISCs to them on the basis of an IRS opinion that he could pay crew members in this manner without tax consequences. Additionally, Douglas Lee received information from the United States Department of Labor that he should pay the crew members in order to protect Lee Farms should a crew leader fail to pay a crew member. Because crew leaders who provided the crew members had a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, were believed not to be employees of any other employer, and supervised the crew members in the field, Douglas Lee considered the crew members employees of the crew leader even if Lee Farms paid their wages on behalf of the crew leader. The Division has

considered the Employer's reasons for having paid the crew members and concludes that it is in the best interest of the State to compromise the Employer's liability for the crew members during the settlement period as there is a reasonable doubt as to the amount of the liability under the law and the facts. Therefore, the Division has agreed that all crew members paid by the Employer during the audit years beginning first quarter 2009 through fourth quarter 2011 were not employees of the Employer. The employer began making changes to the manner in which crew members were paid based on the audit conducted and for any crew members paid by the Employer during the period beginning first quarter 2012 through fourth quarter 2014, the Division agrees that any crew members supplied to work on the farm by crew leaders during this period and paid by the Employer, are not employees for purposes of unemployment insurance benefits. The Employer agrees that beginning January 1, 2015 that he will follow the Employment Security Law for any future crew members and crew leaders.

The Employer has provided lists of all crew members who have worked on the farm during the settlement period, and such has been reviewed by the Division. For the reasons stated above, the Division agrees that for the settlement period, the Employer is not a liable employer for any crew members paid by the Employer on behalf of a crew leader.

4. The Employer has provided a list of all individuals who have worked on the farm as an office worker, processing plant worker, truck driver, and straggler during the settlement period. The Division has reviewed the list of individuals and has calculated the total amount of contribution (tax), interest, late filing penalty, and late payment penalty owed for the settlement period through March 31, 2015 as follows:

Contributions (tax)	\$67,981.53
Interest	\$7,289.83
Late Payment Penalty	\$6,798.15
Late Filing Penalty	\$15,935.96
Total Amount Owed through March 31, 2015	\$98,005.47

5. The Division has agreed to waive the late payment penalty and late filing penalty assessed pursuant to N.C. Gen. Stat. § 96-10(a) and (g), respectively, for the settlement period on the condition that the Employer pay the amount of the tax and interest owed in full by March 31, 2015. The total indebtedness due from the Employer for tax and interest through March 31, 2015 is \$75,271.36.

6. However, the Employer is unable to pay this amount in full; therefore, the Division and the Employer have agreed to enter into a time payment arrangement. The Employer will pay the tax owed in the amount of \$67,981.53 plus interest that continues to accrue on any tax due at a rate determined by N. C. Gen. Stat. § 105-241.21(a) until paid in full, and to be bound by the following terms:

a. The employer will make an initial payment in the amount of \$14,700.00 on or before March 31, 2015. The Employer will make thirty-six (36) payments in the amount of \$1,700.00 to liquidate the tax and interest that continues to accrue on the unpaid tax until paid in full.

b. The first monthly payment of \$1,700.00 is due on or before May 15, 2015 with subsequent payments due on or before the 15th day of each month thereafter until the terms of this Agreement have been met.

c. Payments are to be submitted as scheduled until the indebtedness plus the accrued interest has been liquidated. Payments may be submitted electronically.

d. Subsequent quarterly reports will be filed and paid on or before the due date.

e. The Division has agreed to waive the late payment penalty and late filing penalty if all the terms and conditions of this time payment arrangement are met. In the event that the Employer fails to meet all of the conditions herein set out, the Employer will be required to pay all penalties for the settlement period which totals \$22,734.11. The Division will also immediately and without further notice file a tax lien with the Clerk of Court for the entire amount due including the remaining tax, accrued interest, penalties, and filing fee.

7. Employer agrees that this sum is owed, and it will not attempt to sue for a refund of the tax under N. C. Gen. Stat. § 96-10(e).

8. Payments will be applied beginning with the oldest period and clearing the indebtedness for each period thereafter in the order of tax and interest. The amount owed can be paid in full at any time without penalty. The Employer must call the Division's tax department to determine the payoff which will include the remaining tax owed and interest accrued.

9. The Employer agrees to follow the Employment Security Law regarding any classification of workers on the farm including but not limited to crew members, office workers, processing plant workers, truck drivers, and stragglers.

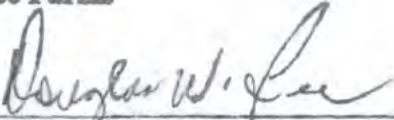
10. This Agreement may be terminated if collection or tax liability is endangered.

11. The Division reserves the right to investigate any claim for benefit that may be filed by an individual alleging that the Employer was a base period employer to determine the Employer's liability, if any, as a base period employer for which wages should have been reported for that individual, and taxes paid thereon.

12. Except as provided for in Paragraph 11 above, the Division agrees that should the employer be selected for an audit by the Division such audit will not involve any of the quarters of the settlement period as defined in this Agreement.

IN WITNESS WHEREOF, this Agreement is executed in duplicate originals as indicated below.

Lee Farms



Douglas W. Lee, owner

Date: 4-22-15

**North Carolina Department of Commerce,
Division of Employment Security**



W. T. Brinn, Jr., Chief Deputy

Date: 4/27/15

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is hereby made and entered into by and between the N.C. Department of Commerce, Division of Employment Security ("DES") and Luanne A. Mullis t/a M & M Mowing Contracting ("M & M Mowing").

WITNESSETH:

WHEREAS, a dispute arose between the Employment Security Commission of North Carolina ("ESC"), now known as DES, and M & M Mowing (collectively the "Parties" and singularly "Party") in or about March 2011 regarding whether or not one James T. McDowell, Jr. ("Claimant") held the status of employee or independent contractor with respect to M & M Mowing;

WHEREAS, the Tax Department of ESC, through its field tax auditor, conducted an investigation and determined that the claimant was an employee and not an independent contractor for which the employer was liable to report wages and pay unemployment insurance contributions (tax) thereon ("tax investigation");

WHEREAS, M & M Mowing contested the determination and timely filed an appeal and protest of said determination on or about March 21, 2011;

WHEREAS, the Parties, after much deliberation and negotiation, desire to settle all matters and controversies between them, without the necessity of further litigation or time and expense to the parties;

NOW THEREFORE, in consideration of the promises and the payment referenced below, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly and unequivocally acknowledged by both Parties, the Parties hereby agree as follows:

SETTLEMENT AGREEMENT

1. **PAYMENT AND WITHDRAWAL OF APPEALS AND PROTEST.** For full and final settlement of any and all claims pertaining to Claimant, James T. McDowell, Jr., M & M Mowing agrees to pay DES, and DES agrees to accept, \$218.41 on or before April 30, 2016 ("Payment"). The Parties agree that such Payment by M & M Mowing includes all tax, interest, late payment and late filing penalties. In addition to the Payment and by virtue of executing this Agreement, M & M Mowing specifically withdraws its March 21, 2011, protest of the tax investigation.

2. **RELEASE AND DISMISSAL.** DES hereby releases and forever discharges M & M Mowing, and its successors, assigns, employees, directors, officers, agents and shareholders, from any and all claims and demands, whether known or unknown, of any type or nature, which DES has, or may have against M & M Mowing arising from or in connection with

the Claimant or the alleged employment of the Claimant by M & M Mowing during the second and third quarters 2010 which allegations remain denied by M & M Mowing. Nothing herein shall be construed as a release of any other claims by DES or as a waiver of any other obligation that M & M Mowing may have to DES by virtue of the laws of the State of North Carolina, the North Carolina Administrative Code, or other regulation promulgated by ESC or DES as the same may relate to individuals other than Claimant or for the collection of any amount by DES from M & M Mowing of any tax, fee or other cost that hereafter may become due.

3. AMENDMENT: This Agreement may not be modified, altered, or changed except upon express written consent of all Parties wherein specific reference is made to this Agreement.

4. NO ADMISSION OF LIABILITY: The Parties agree that this settlement is the compromise of a disputed claim and further agree that neither this Agreement nor the furnishing of the consideration for this Agreement nor the Release agreed to by the Parties shall be deemed or construed at any time for any purpose as an admission by any Party of any liability of any kind. Specifically, M & M Mowing has denied, and continues to deny, that Claimant was an employee (for any purpose) during the relevant time period; however, M & M Mowing desires to buy its peace and avoid the costs of further litigation/dispute resolution processes. Nothing contained in this Agreement shall be admissible evidence in any judicial, administrative, or other legal proceeding (other than a proceeding for breaching this Agreement), or be construed as an admission of any liability or wrongdoing on the part of either Party or of any violation of federal or state statutory or common law or regulation.

5. INTERPRETATION: No oral, parol or extrinsic evidence of any kind shall be admissible to vary, contradict, or explain the terms of this Agreement, which the Parties agree are clear and unambiguous. For purposes of construction or interpretation of the provisions of this Agreement, it is stipulated and agreed that this document has been jointly prepared and drafted by all of the Parties hereto and that all Parties have been provided ample opportunity to read, review and seek the advice of counsel prior to the execution hereof. To the extent any term or provision hereof is found to be uncertain or ambiguous, the same shall not be interpreted in favor of or against any particular Party on account of the drafting thereof, but shall instead be interpreted so as to achieve the intent of the Parties as reflected herein.

6. EFFECTIVE DATE / ENFORCEMENT: This Agreement shall become effective immediately following execution and it shall survive execution and delivery. Each term of this Agreement is a contractual condition and not a mere recital.

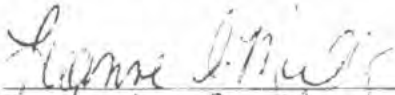
7. GOVERNING LAW: This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina, without regard to its conflict of laws provisions. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding Paragraphs 1, 2 and 4, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. If any other such provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the

remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected, and the intent of this Agreement shall be enforced to the greatest extent permitted by law.

8. ENTIRE AGREEMENT: This Agreement contains the entire Agreement between the Parties with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the Parties, and their respective heirs, successors, assigns, and agents of each. There are no promises, representations, inducements, or agreements, collateral or otherwise, other than those that are specifically set forth in this Agreement, and the undersigned acknowledges that in signing this Agreement they have not relied on any representation or statement not set forth in this Agreement. The terms of this Agreement shall be modified only by the written agreement of the Parties.


IN WITNESS WHEREOF, this Agreement is executed in duplicate originals as indicated below.

Luanne A. Mullis t/a M & M Mowing Contracting


By: Luanne A. Mullis

6/22/10
Date

Department of Commerce, Division of Employment Security:


By: Anne Coomer, Deputy Chief of Tax for Audit

4/29/10
Date

SETTLEMENT AGREEMENT AND RELEASE
Docket No. TAX-3929

The Kids Workshop, Inc. (Employer), and the North Carolina Department of Commerce, Division of Employment Security (DES), by and through their respective counsels, in order to avoid further controversy, expense, and inconvenience, have agreed to settle the matter pertaining to Employer's liability for unemployment insurance contributions (taxes), interest, and penalties for the audit period consisting of the first, second, third, and fourth quarters of 2013, and the first, second, third and fourth quarters of 2014 ("Settlement Period").

BACKGROUND STATEMENT

1. Employer provides periodic habilitative services for individuals with intellectual/developmental disabilities in their homes and community in North Carolina.
2. DES performed an audit and reviewed a list of individuals provided by Employer, who were employed by Employer during the Settlement Period.
3. DES determined that forty-four (44) workers were misclassified as independent contractors, and that they were employees of Employer. Employer issued IRS Form 1099-MISC to each worker at the end of each calendar year. Employer disputed this determination and continues to do so.
4. DES alleged that the amounts due from the Employer, including the total amount of contributions (tax), interest, and penalties allegedly owed to DES by Employer for the settlement period of first, second, third, and fourth quarters 2013, and first, second, third and fourth quarters 2014, were to be calculated as follows:
Contributions (tax) - \$20,924.34
Interest - \$3,958.01
Late Payment Penalty - \$2,092.45
Total Amount Owed - \$26,974.80
5. DES sent Unemployment Tax Assessment and Demand for Payment ("Demand for Payment") notices to Employer dated June 15, 2016 and September 12, 2017.

6. Employer submitted a protest in response to the June 15, 2016 Demand for Payment on July 14, 2016.

STATEMENT OF AGREEMENT

Now, therefore, in consideration of the promises, covenants, representations, and warranties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DES and Employer hereto agree as follows:

1. DES determined that Employer was required to report wages and is liable for paying contributions, interests and penalties for its operation during first, second, third, and fourth quarters 2013; and the first, second, third and fourth quarters 2014 in the amount of \$26,974.80.

2. Employer agrees to pay contributions in the amount of \$20,924.34 plus \$2,000.00 in interest for the total amount of \$22,924.34 to settle all matters in controversy between the parties regarding the subject matter hereof.

3. DES agrees to waive \$2,092.45 late payment penalty and \$1,958.01 in interest.

4. Employer shall mail the payment of \$22,924.34 in the form of a certified cashier's check/money order payable to the "N.C. Department of Commerce, DES" to satisfy the indebtedness for first, second, third, and fourth quarters 2013, and first, second, third and fourth quarters 2014. The payment must include Employer's account number and be sent with this signed Agreement. To avoid further interest, the payment and signed Agreement should be postmarked by November 30, 2017. Please send the payment and signed Agreement to:

Attn: Attorney Regina S. Adams
Legal Services Section
North Carolina Department of Commerce
Division of Employment Security
Post Office Box 26503
Raleigh, NC 27611

5. Employer shall properly classify and report employees pursuant to federal and state laws, including Chapter 96 of the North Carolina General Statutes, known as the Employment Security Law.

6. Employer shall file all reports and make payments of all contributions as they become due to DES.


7. This Agreement settles all matters between DES and Employer for the Settlement Period consisting of the first, second, third, and fourth quarters of 2013; and the first, second, third, and fourth quarters of 2014. As a condition of the parties' entry into this Agreement, Employer withdraws its protest dated July 14, 2016, and requests that the North Carolina Department of Commerce, Board of Review issue an order dismissing the protest as a result of the withdrawal.

8. Each party shall bear its own attorneys' fees and costs incurred through the execution of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed in duplicate originals as indicated below.

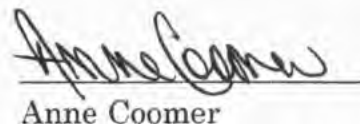
The Kids Workshop, Inc.

**North Carolina Department of
Commerce,
Division of Employment Security**

 11-30-17
Paulette Canaday Date

Vice-President

(Represented by Mary Fletcher King
N.C. State Bar No. 47864)

 12-04-17
Anne Coomer Date

Tax Audit Chief

(Represented by Regina S. Adams
N.C. State Bar No. 17217)



Settlement Agreement Approval of Funds

Form PD-14

Revised 01/03/2017

Payment shall be determined by computing the gross pay which the employee would have earned during the period specified by the grievance decision, settlement/mediation agreement, Equal Employment Opportunity Commission (EEOC) agreement or Office of Administrative Hearings (OAH) order. Back Pay is governed by 25 NCAC 01J.1306.

(A copy of the decision, agreement or order must be attached to this form.)

EMPLOYEE INFORMATION

Agency/University Commerce
Division/Department/School: Division of Employment Security
Employee Name Chie M. Handy SSN xxx-xx-xx
Personnel Number: [REDACTED]
Position Classification: Management Engineer I

GROSS EARNINGS

Calculate earnings of the employee by each month listing the number of work days to be paid and the total amount of payment for the month. Back pay shall include any across the board compensation that would have been included in the employee's regular salary, including one time "bonuses", and eligible longevity pay. Back pay shall include payment for all holidays that the grievant would have been paid for, although it does not include any holiday premium pay. List the grand total payment due to the employee under Total Gross Earnings.

From _____ To _____
Month/Day/Year Month/Day/Year

Month/Year	Days	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Attach additional sheet(s) if necessary.)

TOTAL GROSS EARNINGS _____
Amount

INTERIM INCOME

This gross pay amount shall be reduced by any interim income and/or unemployment compensation received by the employee during the specified period. Earnings derived from approved secondary employment which the employee received prior to and/or during the specified period will not be deducted from the gross earnings amount. All applicable state and federal withholding taxes shall be paid from the reduced gross earnings.

Unemployment Compensation (untaxed) N/A

From _____ To _____ Amount _____
Month/Day/Year Month/Day/Year

(Attach statement from Employment Security Commission)

Other Employment (except secondary employment that was approved prior to dismissal) N/A

Company Name _____

From _____ To _____ Amount _____
Month/Day/Year Month/Day/Year

Company Name _____

From _____ To _____ Amount _____
Month/Day/Year Month/Day/Year

Company Name _____

From _____ To _____ Amount _____
Month/Day/Year Month/Day/Year

TOTAL INTERIM INCOME _____
Amount

TOTAL EARNINGS CALCULATION

The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due

Reduce gross earnings by interim income

Total Gross Earnings _____
Amount

Total Interim Income N/A
Amount

Gross Difference to be Paid _____
Amount

ADDITIONAL SETTLEMENT COSTS

Attorney Fees: \$5,800.00
Compensatory Damages: _____
Punitive Damages: _____
Other: \$9,200.00 (out-of-pocket medical)

Mark one of the following:

☐ I certify that the above statement represents my earnings for the periods as shown above.

☒ I certify that I did not have any earnings to report.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I certify that Chie M. Handy personally appeared
before me this day and signed the foregoing document.

Sworn to and subscribed before me

this 17th day of Feb., 2017

Chie M. Handy
Employee

2/12/17
Date

W. Z. B.
Authorizing Agency Official

2/20/17
Date

Dena Jordan Brown
Notary Public

Barbara Gibson
State Human Resources Director

Date

My Commission Expires: 6/15/2021
Date

Charlie Perusse
State Budget Director

Date

Seal:



PD-14 Submitted by: _____ Date: _____
Printed Name

SETTLEMENT AND RELEASE AGREEMENT

The North Carolina Department of Commerce, including its Division of Employment Security, John Skvarla, and Ted Brinn, Jr. (collectively "DES" or "Defendants"), enter into the following settlement and release agreement ("Agreement") with Chie M. Handy ("Plaintiff" and, together with Defendants, the "Parties").

WHEREAS, Plaintiff currently is employed within DES with the classification of Management Engineer I with a pay grade of 74; and

WHEREAS, on November 23, 2016, Plaintiff filed a Complaint in Wake County Superior Court with the caption *Handy v. N.C. Department of Commerce, Division of Employment Security et al.*, 16 CV 014458;

WHEREAS, the Parties desire to enter into this Agreement to resolve the Complaint and any claims related to Plaintiff's employment in return for the mutual releases and covenants contained herein;

NOW THEREFORE, in order to avoid further controversy, expense and inconvenience, the Parties have agreed upon a full and final settlement of all matters arising from her employment with DES and hereby memorialize the terms and conditions of their Agreement as being:

1. Resignation of Employment. Plaintiff will resign her employment, effective upon the date on which this Agreement is fully executed by all parties and approved by the Office of State Human Resources ("OSHR") and the Office of State Budget and Management ("OSBM").
2. Settlement Payment and Attorney's Fees. Defendants will pay Plaintiff a lump-sum payment of FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00) (the "Payment") within ten (10) days following all parties' execution of this Agreement and approval by OSHR and OSBM. This Payment represents out-of-pocket medical expenses totaling \$9,200.00, and attorney's fees totaling \$5,800.00, neither of which are subject to taxes or any other withholdings. Defendants will make the Payment to the law firm of Nichols, Choi & Lee, PLLC. With regard to the Payment, Plaintiff shall be responsible for paying all taxes and other withholdings required by state and federal law. Plaintiff acknowledges and agrees that Defendants are not responsible for paying any such taxes or other withholdings and are not required to make any contribution to the State of North Carolina Retirement System that corresponds to or represents any part of the Payment.
- 3.
4. Plaintiff's Voluntary Dismissal of Complaint. Plaintiff will file a Notice of Voluntary Dismissal with Prejudice in *Handy v. N.C. Department of Commerce, Division of Employment Security et al.*, 16 CV 014458, within five (5) business days after receiving the payment set forth in Paragraph 2 of this Agreement.

5. Release. In return for the consideration recited in this Agreement, Plaintiff forever discharges and waives all federal and state claims relating to her employment (including any claims for attorney's fees, costs, back pay or benefits) that she may have as of the date of this Agreement against Defendants and all past or present agents and employees of the State of North Carolina and Defendants, in both their official and individual capacities, including all claims related to the Complaint and arising out of Plaintiff's employment with DES. Plaintiff is not, however, waiving: (a) any rights she may have to seek to receive or to actually receive benefits under applicable workers' compensation statutes and to challenge the validity of this Release insofar as it purports to waive any such rights; (b) any rights she may have to pursue claims which by law cannot be waived by signing this Release and to challenge the validity of this Release insofar as it purports to waive any such rights; and/or (c) any rights she may have to enforce this Release.

As part of this release, Plaintiff will not sue Defendants on any matters relating to her employment arising before the execution of this Agreement. If Plaintiff violates this provision, she will: (i) return the complete payment received under this Agreement and Defendants' obligations under this Agreement will be null and void, except to the extent that the release set forth above would be invalidated; and (ii) indemnify Defendants for all expenses that they incur in connection with Plaintiff's violation of this provision. Plaintiff acknowledges that such violation constitutes sufficient irreparable harm and injury that would justify the issuance of a restraining order.

The Defendants and all past or present agents and employees of the State of North Carolina and Defendants, in both their official and individual capacities, release Plaintiff from any and all liability that has arisen or might arise from all claims and causes of action arising out of Plaintiff's employment with DES. As part of this release, Defendants will not sue Plaintiff on any matters relating to her employment arising before the execution of this Agreement, either in her individual capacity or as a party with others. If Defendants violate this provision, they will indemnify Plaintiff for all expenses that she incurs in connection with Defendants' violation of this provision. Defendants acknowledge that such violation constitutes sufficient irreparable harm and injury that would justify the issuance of a restraining order.

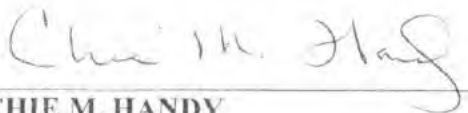
6. Older Workers Benefit Protection Act Release. In compliance with the Age Discrimination in Employment Act ("ADEA") as amended by the Older Workers Benefit Protection Act of 1990 ("OWBPA") (collectively, "those Acts"), Plaintiff acknowledges that the waiver contained in Paragraph 4 above includes waiver of her rights under those Acts and releases Defendants from liability under those Acts. Plaintiff acknowledges that this waiver is knowing and voluntary. Plaintiff waives her right to have twenty-one (21) calendar days to consider this Agreement. She acknowledges that she has read and understands all of the terms and conditions of this Agreement. Plaintiff warrants and represents that she has either consulted with an attorney concerning all of the terms and conditions of this Agreement prior to executing this Agreement or has willingly chosen to waive her right to consult with an attorney concerning the terms and conditions of this Agreement. Plaintiff acknowledges that she has received consideration under the terms of this Agreement in

exchange for her waiver of her rights under the ADEA and the OWBPA. Plaintiff shall have seven (7) calendar days to revoke this Agreement following execution of the same, and this Agreement is effective only if there is no revocation by Plaintiff during that seven (7) day period of time.

7. No Admission of Liability. The Parties understand and agree that this Agreement represents a compromise of disputed claims and is intended merely to terminate any and all claims and avoid further litigation among the parties. Entry into this Agreement is not to be construed as an admission of liability and Defendants expressly deny they are liable to Plaintiff under any theory of law for any of Defendants' actions.
8. Full Cooperation. The Parties agree to cooperate fully to execute any and all supplemental documents necessary to effectuate this Agreement, and to take all additional actions that may be necessary to give full force and effect to the terms of this Agreement.
9. Non-Disparagement. The Parties shall not make any statements or release any information not legally required to be released that disparage or impugn the reputation of one another.
10. Governing Law and Forum. This Agreement shall be governed by, construed and enforced in accordance with laws of the State of North Carolina, and the place, situs and forum of this contract shall be Wake County, North Carolina, where all matters relating to the validity, construction, interpretation and enforcement shall be determined.
11. Severability. If any of the provisions of the Agreement are determined to be invalid or unenforceable, that provision so determined shall be severable from the other provisions of the Agreement, and the Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been included herein.
12. Entire Agreement. This Agreement contains the entire agreement between the Parties and there are no understandings or agreements, verbal or otherwise, regarding this settlement except as expressly set forth herein.
13. Review & Approval by OSHR. The Parties confirm their understanding that this Agreement is subject to approval by OSHR, in accordance with 25 N.C.A.C. 01J .1304.

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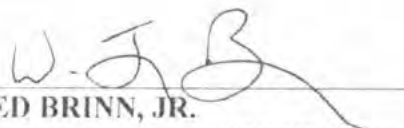
IN WITNESS WHEREOF, the undersigned set forth their hands and seals as of the date written below:


CHIE M. HANDY
Plaintiff

02/17/2017
DATE


ANTHONY M. COPELAND
Secretary of NC Department of Commerce

2/17/2017
DATE


TED BRINN, JR.
Assistant Secretary of NC Division
of Employment Security

2/20/17
DATE

SETTLEMENT AGREEMENT
BETWEEN THE U.S. DEPARTMENT OF LABOR
AND
THE NORTH CAROLINA DEPARTMENT OF COMMERCE
DIVISIONS OF EMPLOYMENT SECURITY
AND WORKFORCE SOLUTIONS

I. BACKGROUND

This Settlement Agreement (Agreement) arises as a result of a compliance review, conducted by the U.S. Department of Labor's (DOL's) Civil Rights Center (CRC), of the Division of Employment Security (DES) and Division of Workforce Services (DWS) (collectively referred to as Respondents) of the North Carolina Department of Commerce. The compliance review addressed whether the unemployment insurance (UI) program operated by DES and the employment service program operated by DWS were in compliance with their obligations to provide limited English proficient (LEP) individuals¹ with meaningful access to programs and activities receiving federal financial assistance.

CRC conducted its review pursuant to its authority under Section 188 of the Workforce Investment Act of 1998 (WIA Section 188), as amended, previously published at 29 U.S.C. 2938²; the regulations implementing WIA Section 188, at 29 CFR Part 37; Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. 2000d *et seq.*; and DOL's regulations implementing that title, at 29 CFR Part 31.

Overall, CRC believes that DES and DWS policies, practices and procedures require improvement to comply with the requirements as set forth under Title VI, WIA Section 188, and the implementing regulations for these statutes. In order to avoid further controversy, expense and inconvenience, the Parties have agreed to enter into this Agreement, which is intended to resolve the concerns identified by CRC's review and prevent further legal action by CRC and the U.S. Department of Justice regarding the specific matters/time frame addressed in the review. However, nothing herein shall be construed as an admission of liability by the Respondents.

¹ Individuals who have a limited ability to read, write, speak, or understand English are limited English proficient, or "LEP." See U.S. Department of Labor, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 32290, 32291 (May 29, 2003) (DOL LEP Guidance), available at <http://www.gpo.gov/fdsys/pkg/FR-2003-05-29/pdf/03-13125.pdf> (last visited August 19, 2016); U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41457 (June 18, 2002) (DOJ Guidance), available at <http://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf> (last visited August 19, 2016).

² As of July 1, 2015, WIA was replaced by the Workforce Innovation and Opportunity Act (WIOA). As a result, the previously-published sections of WIA have been deleted from the U.S. Code. However, since the allegedly-discriminatory actions took place while WIA was in effect, CRC has the authority to determine whether WIA was violated.

II. DETAILS OF THE AGREEMENT

The Respondents agree to carry out the responsibilities set forth in this Agreement and take the following steps:

1. *The Respondents will assess the language needs of the LEP populations they serve.*
 - A. **Content of the assessments.** The assessments will serve to inform the Respondents' LEP plans by identifying the highest-demand languages and specific interpretation and translation needs³ of the LEP populations they serve, on both a state and local level. The assessments will include, but not be limited to, the following information:
 - i. Information and statistics on State and local⁴ LEP communities, as described in section V(1) of the DOL LEP Guidance.
 - ii. Information and assessments from community and advocacy groups that service LEP communities, as described in the DOL LEP Guidance.
 - iii. A plan for adequately tracking and reporting future encounters with LEP individuals.
 - B. **Deadlines.** DES and DWS will submit the written reports of these assessments to CRC for review *within ninety (90) days* of the effective date of this Agreement. *Within thirty (30) days* of receiving the report(s), CRC may provide the Respondents with written comments regarding the report(s). No later than *thirty (30) days* from the date on which CRC provides such comments to the Respondents, the parties will complete negotiations regarding any further changes needed to secure CRC's final approval of the assessment. In the case of any unresolved disagreement, CRC will have final authority to determine the actions necessary for DES and/or DWS to take to comply with the laws that CRC enforces. If CRC does not provide written comments within the 30-day period, the reports will be deemed approved at the expiration of the 30 days.
2. *Based on the results of the assessments, the Respondents will develop and implement language access plans for providing meaningful access to the LEP populations they serve.*
 - A. **Content of the language access plan(s).** The language access plan(s) will detail how DES and DWS will each provide meaningful access to LEP individuals, and will include, but not necessarily be limited to, the following information:

³ This requirement includes the identification of translation preferences specific to these communities, such as for Traditional or Simplified Chinese.

⁴ DWS will include in its assessment information regarding the populations served by its local workforce offices in order to take into account concentrations of specific LEP communities that may not be captured by statewide numbers.

- i. List of vital documents and translations available, how staff may access these documents, and when and how staff members are to provide these documents to LEP customers;
- ii. Detailed procedures for acquiring additional translations for LEP customers;
- iii. Policy on using Babel notices on important written materials,⁵ specifying on which written materials the Babel notices are required;
- iv. Detailed procedures for tracking and reporting encounters with LEP customers;
- v. Detailed procedures for acquiring interpretation services for LEP customers, both telephonically and in-person;
- vi. Policies for notifying individuals, in English and in highest-demand secondary languages, of language assistance in workforce centers, on DES and DWS Web sites, and through automated telephone systems;
- vii. Clear policies that address problematic practices such as over-reliance on online translation services to facilitate encounters with LEP customers, continuing with an LEP customer in English after an interpreter has been requested, and relying on friends or family members to interpret for LEP customers;
- viii. Policy on annual staff training regarding providing meaningful access to LEP customers and language assistance policies, procedures and practices;
- ix. Policies and requirements for regular and continuing outreach, collaboration and communication with community and advocacy groups at the state and local levels;
- x. Plans and deadlines for regular monitoring and evaluation of language assistance services; and
- xi. Timeframes and requirements for regular updates and improvements to the language access plans.

B. Deadlines. DES and DWS will submit their draft language access plan(s) to CRC *within ninety (90) days* of the date of CRC's approval (or deemed approval) of the assessment outlined in Part II(1) of this Agreement. *Within thirty (30) days* of receiving the plan(s), CRC may provide the Respondents with written comments regarding the plan(s). No later than *thirty (30) days* from the date on which CRC delivers such comments to DES and/or DWS, the parties will complete negotiations regarding any further changes needed to secure CRC's final approval of the language access plan(s). In the case of any unresolved

⁵ A Babel notice is a tagline, written in several different languages and added to English-language documents or forms, to alert LEP readers that the documents or forms contain important information and that language assistance is available to help the LEP readers understand the contents.

disagreement, CRC will have final authority to determine the actions necessary for DES and/or DWS to take to comply with the laws that CRC enforces. If CRC does not provide written comments within the 30-day period, the plan(s) will be deemed approved at the expiration of the 30 days. DES and DWS will fully implement the plan(s) *within fifteen (15) days* of CRC's final approval (or deemed approval) of the plan(s).

3. *The Respondents will correct deficiencies in translations of written materials, including web pages and online filing systems.*

A. **Identification of vital documents.** DES and DWS will review their written materials, including web pages and online filing systems, and prepare a list of those written materials necessary to understanding, accessing, and receiving benefits and/or services. Each agency's vital documents list will indicate which of these written materials have already been translated and into which languages they have been translated. The written materials on the vital documents list will include, but not be limited to:

- i. Web pages that contain vital information about, or otherwise provide meaningful access to, benefits or services⁶;
- ii. Applications and intake forms;
- iii. Any forms or information needed to continue qualifying for benefits⁷;
- iv. Documents explaining or describing eligibility criteria for benefits or services;
- v. Notices and information about appeal rights;
- vi. Information, notices⁸ and forms regarding discrimination and equal opportunity complaints and investigations; and
- vii. Notices advising individuals of free language and translation assistance.

B. **Translate and disseminate aforementioned vital written materials.** The materials will be translated by qualified individuals in the languages identified as the highest-demand by the assessment completed pursuant to Part II(1) of this agreement, and the translations will be reviewed to ensure accuracy. Upon completion, the translations will be distributed to all DES and DWS staff at Remote Service Centers and Workforce Offices and posted on DES and DWS Web sites.

⁶ For DES, this includes its entire online system for filing for unemployment insurance.

⁷ E.g., DES's work search reports, required to receive unemployment insurance.

⁸ The word "notices" in this Agreement includes signs displaying important information in workforce offices, for example those that would inform visitors of language assistance available or of their rights to file a discrimination complaint.

- C. **Deadlines.** Each of the Respondents will submit to CRC for review, *within ninety (90) days* of the approval of the assessment outlined in Part II(1) of this Agreement, the list(s) of vital documents identified through this review. *Within thirty (30) days* of receiving the list(s), CRC may provide the Respondents with written comments regarding the list(s). No later than *thirty (30) days* from the date on which CRC provides such comments to the Respondents, the parties will complete negotiations regarding any further changes needed to secure CRC's final approval of the documents list(s). In the case of any unresolved disagreement, CRC will have final authority to determine the actions necessary for DES and/or DWS to take to comply with the laws that CRC enforces. If CRC does not provide written comments within the 30-day period, the list(s) will be deemed approved at the expiration of the 30 days. *Within thirty (30) days* of CRC's final approval (or deemed approval) of the vital documents list(s), the Respondents will translate and disseminate the documents on the list(s), as described in Part II(3)(B) of this Agreement, and notify CRC in writing of the date(s) on which these actions were taken.
4. *The Respondents will identify and correct deficiencies with the provision of interpretation services to LEP individuals.*
- A. **Identification of deficiencies and corrective measures.** The Respondents will each conduct a review of their services and identify all points at which employees may have oral interactions (telephonic or in-person) with LEP individuals and assess the barriers that their systems currently present to these individuals. The reviews will identify corrective actions for all deficiencies found and list deadlines for these actions to be taken.
- B. **Deadlines.** *Within ninety (90) days* of the effective date of this Agreement, the Respondents will complete the review described in Part II(4)(A) of this Agreement, and submit to CRC for review a written report that includes a description of any and all deficiencies identified by the review and the corresponding recommended corrective measures. *Within thirty (30) days* of receiving the report, CRC may provide the Respondents with written comments regarding the report. No later than *thirty (30) days* from the date on which CRC provides such comments to the Respondents, the parties will complete negotiations regarding any further changes needed to secure CRC's final approval of the report and recommended corrective measures. In the case of any unresolved disagreement, CRC will have final authority to determine the actions necessary for DES and/or DWS to take to comply with the laws that CRC enforces. If CRC does not provide written comments within the 30-day period, the report will be deemed approved at the expiration of the 30 days. *Within thirty (30) days* of receiving final approval (or deemed approval) from CRC, the Respondents will notify CRC in writing that all corrective actions have been fully implemented, and submit documentation demonstrating compliance.

5. *The Respondents will provide training to all staff on language access obligations and providing meaningful access to LEP individuals through language assistance services.*

A. **Content of Training.** The Respondents will provide its managers, supervisors, and employees, at least once each calendar year, with accurate, up-to-date training on legal requirements related to providing benefits, services and information to LEP individuals. The Respondents will also provide additional training for all employees with special roles in assisting LEP individuals, such as those employees designated to be LEP Specialists in local workforce offices. The Respondents will be responsible for all fees and costs associated with training. At a minimum, all training will address the following topics:

- i. Basic LEP awareness and general information about national origin discrimination;
- ii. The Respondents' obligations to provide LEP individuals with meaningful access under WIA Section 188 and Title VI;
- iii. The language access plans and corresponding procedures that the Respondents have developed and implemented for responding to customers' language assistance needs;
- iv. How and when to provide LEP customers with interpretation services;
- v. The agencies' vital documents list, use of available translated documents and procedures for acquiring additional translations;
- vi. The process for tracking and reporting encounters with LEP individuals;
- vii. Collaborations with community and advocacy groups; and
- viii. Prohibited actions, such as continuing with an LEP customer in English after an interpreter has been requested or requesting that LEP customers provide their own interpreters.

B. **Deadlines.** The Respondents will submit plans for providing initial and ongoing staff training to CRC for review *within ninety (90) days* of the effective date of this Agreement.

- i. Each training plan will:
 - a. Identify each trainer, who will be a recognized expert in the topic/s to be addressed, and provide information regarding expert qualifications;
 - b. Identify, by name and title, Respondent staff who are responsible for overseeing and implementing the training plan;
 - c. Provide a detailed list of courses and topics, which will describe the contents of such course and the method of training being used; and

- d. Specify time tables for delivery, including a plan for ongoing, periodic training updates for all staff.
- ii. *Within thirty (30) days of receiving the draft training plan(s)*, CRC may provide the Respondents with written comments regarding the training plan(s). No later than *thirty (30) days* from the date on which CRC provides such comments to the Respondents, the parties will complete negotiations regarding any further changes needed to secure CRC's final approval of the training plan(s). In the case of any unresolved disagreement, CRC will have final authority to determine the actions necessary for DES and/or DWS to take to comply with the laws that CRC enforces. If CRC does not provide written comments within the 30-day period, the plan(s) will be deemed approved at the expiration of the 30 days. *Within sixty (60) days* of CRC's final approval (or deemed approval) of the training plan(s), the Respondents will provide initial training to all employees, and provide written documentation to CRC that the training has taken place. The Respondents will continue to provide periodic, ongoing training to all staff in accordance with the training plan.

6. The Respondents will publicize the availability of language assistance and of potentially-aggrieved LEP individuals' right to file claims of delay/denial.

- A. **Public outreach.** The Respondents will agree to establish and maintain working relationships with appropriate community groups, including, but not limited to, LEP advocacy groups, to ensure that LEP individuals know what their rights are in connection with, and how to obtain services from, DES and DWS. The Respondents' public outreach activities will comply fully with 29 CFR § 37.42 and the parallel provision in 29 CFR Part 38, the regulations implementing WIOA Section 188 (currently § 38.42).⁹ Those sections provide a list of varying types of outreach activities, including advertising in media that specifically target various populations, and consulting with appropriate community service groups about ways the recipient can improve its services to better serve a target population. As set forth in subsection II(6)(D) below, the Respondents will submit plans to CRC that include detailed lists of all outreach activities to be conducted, the community or advocacy groups with which the Respondents are collaborating, and relevant dates and deadlines. After executing their outreach plans, the Respondents will provide relevant documentation to CRC.

⁹ On July 23, 2015, DOL published in the Federal Register an initial version of 29 CFR Part 38, which included only technical changes updating the WIA nondiscrimination regulations at 29 CFR Part 37 (e.g., replacing references to "WIA" with references to "WIOA"). See 80 FR 43872. This initial version of the WIOA nondiscrimination regulations is in effect as of the date of the signing of this Settlement Agreement. However, on January 26, 2016, DOL published a Notice of Proposed Rulemaking (NPRM), to reflect developments in equal opportunity and nondiscrimination jurisprudence, changes in the practices of recipients and beneficiaries since 1999 (when the WIA nondiscrimination regulations were issued), and proposed changes in DOL's enforcement procedures and processes. See Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act, Proposed Rule, 81 Fed. Reg. 4494. The precise citations to the provisions of the final version of the WIOA nondiscrimination regulations that will govern outreach will not be known until issuance of a final rule based on the NPRM.

B. Notify customers of their language access rights and their right to file claims of delay/denial.

- i. Audience for notice. DES and DWS will develop written notices intended to reach LEP individuals who may have been denied language assistance since July 1, 2014, while those individuals were seeking benefits, services and/or information from DES and/or DWS through one or more of the following venues:
 - a. DWS local workforce offices;
 - b. Any DES telephone line, including those for UI filing, appeals and general assistance¹⁰;
 - c. The DES online claims filing system and Web site.
- ii. Contents of notice. The notices cited above:
 - a. will be written in English, Spanish, Chinese, and Vietnamese;
 - b. will inform claimants that:
 - (1) CRC has reviewed DES and DWS policies, procedures and practices for providing services, benefits and information to persons with limited English proficiency. DES and DWS recently entered into an agreement with CRC to improve its services to LEP persons;
 - (2) They (claimants) may be entitled to benefits or services, such as UI or job training funds, that may have been inappropriately denied;
 - (3) If they (claimants) believe that they were denied or delayed any benefits or services from DES and/or DWS because of their limited English proficiency, they may submit claims of delay/denial, along with documentation, to DES and/or DWS *within ninety (90) days* of the notice date, to demonstrate the type of benefits they believe they are entitled to receive, and the reasons why they believe their language created a barrier for them to obtain the benefits to which they are entitled;
 - (4) If DES and/or DWS denies any such claim regarding allegedly denied or delayed benefits or services, claimants may appeal that denial by filing a complaint with CRC within one hundred eighty (180) days of receiving notice of the denial;
 - (5) DES and DWS agree that they will not discriminate or retaliate against any individual because he or she participated in any way in

¹⁰ 1-888-737-0259, 1-888-372-3453, 1-866-278-3822, 919-707-1150, and 919-707-1060.

this matter, including filing the complaint or responding to the notice; and

- (6) Any persons are entitled to file complaints with CRC within one hundred eighty (180) days of any action taken against them that they feel was taken because of their limited English proficiency or membership in any other protected class.

c. will include:

- (1) a "Babel notice" alerting LEP individuals who communicate in languages other than Spanish, Chinese, or Vietnamese that it contains important information about their legal rights, and informing them that they may call a specific phone number, to be established by DES and DWS, to obtain, at no cost, information in appropriate languages about their rights; and
- (2) the addresses (postal and e-mail) at which the aforementioned appeals of denial, or discrimination complaints, may be filed with CRC, and other contact information for CRC in case of questions.

iii. Distribution of notice. The notice will be publicized in the following manner:

- a. Prominent display on DES and DWS Web sites;
- b. Notices posted in all North Carolina workforce centers;
- c. Verbal announcements on all DES automated telephone systems;
- d. Direct mailing to individual complainants who have already identified themselves to CRC.

iv. Additional requirement for posting of notices at local workforce offices. Each local workforce office manager will notify DWS in writing of any significant LEP population in their service delivery area speaking a language other than Spanish, Chinese, or Vietnamese. In the event that a workforce office does not have any significant LEP population speaking a language other than Spanish, Chinese, or Vietnamese, it will notify DWS of that fact in writing. DWS will provide additional translations of the notice as needed to local workforce offices, and the workforce offices will post the notices.

C. Processing claims. Upon receipt of claims from individual claimants, DES and DWS will expeditiously review and process the claims and provide any benefits to which the claimants may be entitled, plus interest.

D. Deadlines. The Respondents will submit to CRC for review, *within ninety (90) days* of the effective date of this Agreement, the draft written notice outlined in Part II(6)(B) of this Agreement. *Within fifteen (15) days* of receipt, CRC may provide Respondents with written

comments regarding the draft notice. No later than *thirty (30) days* from the date on which CRC provides such comments to the Respondents, the parties will complete negotiations regarding any further changes needed to secure CRC's final approval of the draft notice. In the case of any unresolved disagreement, CRC will have final authority to determine the actions necessary for DES and/or DWS to take to comply with the laws that CRC enforces. If CRC does not provide written comments within the 30-day period, the draft notice will be deemed approved at the expiration of the 30 days. *Within thirty (30) days* of CRC's approval (or deemed approval), the Respondents will mail and publicize this notice, and provide CRC with documentation¹¹ that these actions have been taken, as described in subsection B(iii) above. *Within one-hundred eighty (180) days* from the date on which the Respondents mail and publicize the notice, the Respondents will provide CRC with documentation that it processed all claims received.

III. RETALIATION PROHIBITED

The Respondents agree that there will be no discrimination or retaliation of any kind against any individual because of filing the complaint underlying this matter; furnishing information to, or assisting or participating in, any investigation or hearing related to nondiscrimination or equal opportunity; opposing any practice that the individual believes violates the applicable legal provisions related to nondiscrimination or equal opportunity; or otherwise exercising any rights or privileges related to the nondiscrimination and equal opportunity laws applicable to the Respondents and enforced by CRC.

IV. REPORTING

The Respondents agree to provide written reports to CRC describing all actions they take to comply with this agreement and their dates of completion, as well as identifying the individuals responsible for each action. The reports will be filed *within one calendar year* of the effective date of this Agreement. *Within sixty (60) days* of receiving the report, CRC may require additional documentation and/or verification of actions taken to ensure that all terms of the Agreement have been satisfied.

V. DURATION OF AGREEMENT

This Agreement will be signed by an authorized official of each of the Respondents and by the CRC Director. The effective date of this Agreement will be the date on which the last signatory signs the Agreement. It will automatically expire eighteen (18) months after the effective date, or when all terms of the Agreement have been satisfied, whichever is later.

VI. EXTENSION OF DEADLINES

The Respondents may request, and CRC may grant, extensions of the deadlines set forth in this Agreement for good cause shown.

¹¹ For DWS, this documentation includes the local offices' written notification regarding their service populations.

VII. AGREEMENT IS MADE WITHOUT PREJUDICE TO OTHER PENDING CASES

All parties agree that the settlement of this case does not affect any other case pending before the U.S. Department of Labor.

VIII. ENFORCEMENT

This Agreement is enforceable by the Department pursuant to the provisions of 29 CFR § 37.97 and 29 CFR §§ 37.102-37.105. In accordance with these provisions, the Respondents agree that any violation of WIA Section 188, Title VI, or their implementing regulations that is resolved through this Agreement will not recur. If DOL believes that Respondents have failed to comply in a timely manner with any requirement of this Agreement without obtaining advance written approval from DOL for a modification of the relevant terms, DOL will notify Respondents in writing and will attempt to resolve the issue or issues in good faith. Failure of the parties to reach a satisfactory resolution of the issue or issues raised, within thirty (30) days of the date on which DOL provided written notice to Respondents, may result in referral of the matter to the Department of Justice to institute a civil action in federal district court to enforce the terms of this Agreement, or, after opportunity for a hearing, in the termination or denial of federal financial assistance extended to the Respondent(s) by DOL. In any proceeding for enforcement of this agreement, DOL will not be required to provide evidence establishing a violation of the underlying legal requirements. Rather, DOL may simply seek enforcement of this agreement. Failure by DOL to enforce any provision will not be construed as a waiver of DOL's right to enforce the other deadlines and provisions of this Agreement. Further, CRC's failure to enforce any provision of this Agreement or provide input by the Agreement's deadlines does not relieve the Respondents of their continuing duty to comply with Title VI, WIA or WIOA. Nor does such failure preclude DOL from carrying out its duties under Title VI, Section 188 of WIA/WIOA, or any other statute DOL is authorized to enforce, should a complaint be filed with DOL or any other information presented that alleges noncompliance with federal civil rights laws.

IX. MISCELLANEOUS PROVISIONS

This agreement is applicable to and binding upon the parties, their officers, agents, employees, assigns, and successors in office.

X. SIGNATURES

W. T. Brinn, Jr.
Assistant Secretary
N.C. Department of Commerce –
Division of Employment Security

Date

Naomi Barry-Perez
Director
U.S. Department of Labor –
Civil Rights Center

Date

Will Collins
Assistant Secretary
N.C. Department of Commerce –
Division of Workforce Solutions

Sept. 19, 2016
Date

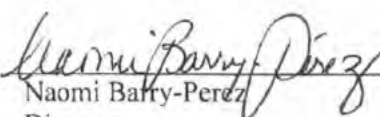
X. SIGNATURES



W. T. Brinn, Jr.
Assistant Secretary
N.C. Department of Commerce –
Division of Employment Security

9/19/16

Date



Naomi Barry-Perez
Director
U.S. Department of Labor –
Civil Rights Center

SEP 22 2016

Date

Will Collins
Assistant Secretary
N.C. Department of Commerce –
Division of Workforce Solutions

Date

SETTLEMENT AND RELEASE AGREEMENT

The North Carolina Department of Commerce, including its Division of Employment Security (together, "Respondent"), enter into the following settlement and release agreement ("Agreement") with Shonda Pulliam ("Petitioner" and, together with Respondents the "Parties").

WHEREAS, Respondent employed Petitioner as a Processing Assistant IV until March 14, 2015, when Petitioner's employment was terminated; and

WHEREAS, on or about October 8, 2015, Petitioner filed a petition for contested case in the North Carolina Office of Administrative Hearings ("OAH") with the caption *Shonda Pulliam v. North Carolina Department of Commerce, Division of Employment Security*, 15 OSP 07391 ("Petition"); and

WHEREAS, in lieu of termination, Petitioner is willing to resign her employment effective March 14, 2015, and Respondent is willing to permit Petitioner to do so; and

WHEREAS, in return for the mutual releases and covenants contained herein, the Parties desire to enter into this Agreement to resolve the Petition and all claims related to Respondent's employment of Petitioner, including but not limited to the Petitioner's complaint filed with the North Carolina Department of Labor (File Number 247-15) and the Petitioner's charge of discrimination filed with the United States Equal Employment Opportunity Commission (Charge No. 433-2016-00932), other than Petitioner's pending Workers' Compensation claim (Claim # [REDACTED]).

NOW THEREFORE, in order to avoid further controversy, expense and inconvenience, the Parties have agreed upon a full and final settlement and release of all matters related to the Petition, all matters related to Respondent's employment of Petitioner other than the aforementioned Workers' Compensation claim and all matters related to Petitioner's separation from such employment, and the Parties hereby memorialize the terms and conditions of their Agreement as being:

1. Settlement Payments

In full satisfaction of all claims Petitioner releases in Paragraph 4 below and in consideration for Petitioner's other promises and covenants in this Agreement, Respondent will pay Petitioner the sum of \$ 11,343.50 AND ~~NO~~ CENTS). This payment to Petitioner personally will be subject to appropriate income and employment tax withholdings required by state and federal law and will be paid after this Agreement and any other applicable supporting paperwork have been approved by the North Carolina Office of State Human Resources and the North Carolina Office of State Budget Management and approved and processed by the North Carolina Office of State Controller.

Additionally, Respondents will pay Petitioner's counsel (Janet J. Lennon, Esq., Tax Identification No. [REDACTED] 123 West Main Street, Suite 310, Durham, NC 27701) the

Settlement Agreement

Shonda Pulliam v. North Carolina Department of Commerce, Division of Employment Security
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sum of \$ 4,636.50 ^{F.A.T.} AND ~~NO~~ CENTS). This payment to Petitioner's counsel will not be subject to tax withholdings by Respondents, and Petitioner and Petitioner's counsel assume full responsibility for all federal or state taxes that may be owed and all reporting requirements that may be required for this payment.

As part of the two payments in this Paragraph 1, the Parties shall not be required to make employee retirement contributions to the Retirement Systems Division of the North Carolina Department of State Treasurer or to make payments for retroactive reinstatement to the North Carolina State Health Plan.

2. Resignation

Petitioner will resign her employment with Respondent effective March 14, 2015, by providing with this signed Agreement a letter addressed to Respondent's Interim Assistant Secretary W. T. Brinn stating only the following:

Dear Interim Assistant Secretary Brinn:

I resign my employment with the North Carolina Department of Commerce, Division of Employment Security effective March 14, 2015.

Sincerely,

Shonda Pulliam

3. Removal of Termination Letter and Other Related Discipline

Respondents shall remove from Petitioner's personnel file the March 13, 2015 termination letter, all documents incorporated by reference in or attached to that termination letter, Petitioner's internal responses or replies to or internal agency appeals from such documents and from the termination letter and any employment action forms related to Petitioner's termination.

4. Releases

In return for the consideration recited above, Petitioner forever discharges and waives all federal and state claims, known or unknown, that she may have as of the date of this Agreement against Respondent (including but not limited to any claims she has under the Petition, any claims for attorney's fees or legal costs, any complaints filed with the North Carolina Department of Labor and any charges of discrimination filed with the Equal Employment Opportunity Commission), other than Petitioner's pending Workers' Compensation claim (Claim

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[REDACTED], and, in both their official and individual capacities, all of Respondent's past or present agents, employees and officials.

Petitioner acknowledges that this discharge and waiver for consideration complies with and includes her knowing and voluntary waiver of her rights under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act of 1990. Petitioner has 21 calendar days to consider this Agreement but can execute it sooner than the expiration of this period. Petitioner warrants and represents that she has read, reviewed and consulted with her attorney concerning all of the terms and conditions of this Agreement prior to executing it. Petitioner shall have seven (7) calendar days to revoke this Agreement following its execution, and the Agreement is effective only if Petitioner does not revoke it within this period.

Petitioner is not, however, waiving: (a) any rights she may have to seek to receive or to actually receive workers' compensation benefits under applicable workers' compensation statutes and to challenge the validity of this Release insofar as it purports to waive any such rights; (b) any rights she may have to pursue claims which by law cannot be waived by signing this Release and to challenge the validity of this Release insofar as it purports to waive any such rights; and/or (c) any rights she may have to enforce this Release.

As part of this release, Petitioner will not sue Respondent on any matters relating to her employment arising before the execution of this Agreement, either in her individual capacity or as a party with others. If Petitioner violates this provision, she will: (i) return the complete Payment received under this Agreement and Respondent's obligations under this Agreement will be null and void, except to the extent that the release set forth above would be invalidated; and (ii) indemnify Respondent for all expenses that it incurs in connection with Petitioner's violation of this provision. Petitioner acknowledges that such violation constitutes sufficient irreparable harm and injury that would justify the issuance of a restraining order.

5. No Admission of Liability

The Parties understand and agree that this Agreement represents a compromise of disputed claims and is intended merely to terminate any and all claims and avoid further litigation among the parties. Entry into this Agreement is not to be construed as an admission of liability by any Party, and the Parties expressly deny they have committed any wrongdoing, and all Parties agree that they are not liable to one another under any theory of law for any of their actions.

6. Petitioner's Voluntary Dismissal of the Petition

Petitioner will execute the Notice of Voluntary Dismissal With Prejudice attached to this Agreement as Exhibit A, which Respondent will file with the OAH after the Payment has been

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received.

7. Petitioner's Voluntary Withdrawal of her NCDOL Complaint

Petitioner will execute and file a written withdrawal of the complaint filed against Respondent in the North Carolina Department of Labor (File Number 247-15) after the Payment has been received. Petitioner will provide a copy of the written withdrawal to Respondent when such withdrawal is filed.

8. Petitioner's Voluntary Withdrawal of her EEOC Charge

Petitioner will execute and file a written withdrawal of the charge of discrimination filed against Respondent in the United States Equal Employment Opportunity Commission (Charge No. 433-2016-00932) after the Payment has been received. Petitioner will provide a copy of the written withdrawal to Respondent when such withdrawal is filed.

9. Reemployment

Petitioner will not reapply for or accept employment with Respondent and the North Carolina Department of Commerce (including any Commerce divisions and the boards and commissions under Commerce). Petitioner is free to apply for and accept employment with other North Carolina state or local agencies, boards or commissions.

10. Severability

If any of the provisions of the Agreement are determined to be invalid or unenforceable, that provision so determined shall be severable from the other provisions of the Agreement, and the Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been included herein.

11. Governing Law and Forum

The Parties agree that this Agreement shall be governed by, construed and enforced in accordance with laws of the State of North Carolina and that the place of this contract, its situs and forum shall be Wake County, North Carolina, where all matters relating to the validity, construction, interpretation, and enforcement shall be determined.

12. Full Cooperation

The Parties agree to cooperate fully to execute any and all supplemental documents necessary to effectuate this Agreement and to take all additional actions that may be necessary to

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give full force and effect to the terms of this Agreement.

13. Entire Agreement


This Agreement contains the entire agreement between the Parties and there are no understandings or agreements, verbal or otherwise, regarding this settlement except as expressly set forth herein.

By the signatures below, the Parties indicate that they have read, understand, and agree with the terms and conditions stated in this Agreement, and by their signature they acknowledge the agreement and that in signing this Agreement they intend to be legally bound by it.

This the 31 day of March 2016.


SHONDA PULLIAM
Petitioner

This the 5 day of APRIL 2016.


W. T. BRINN
Interim Assistant Secretary of the North Carolina Department of Commerce

PETITIONER'S COUNSEL


JANET LENNON
Attorney at Law
123 West Main Street
Suite 310
Durham, NC 27701

RESPONDENTS' COUNSEL

 4.5.16
TIMOTHY M. MELTON
Staff Attorney
N.C. Department of Commerce,
Division of Employment Security
P.O. Box 25903
Raleigh, NC 27611

Settlement Agreement Approval of Funds

Payment shall be determined by computing the gross pay which the employee would have earned during the period specified by the grievance decision, settlement/mediation agreement, Equal Employment Opportunity Commission (EEOC) agreement or Office of Administrative Hearings (OAH) order. Back Pay is governed by **25 NCAC 01J.1306**.

(A copy of the decision, agreement or order must be attached to this form.)

EMPLOYEE INFORMATION

Agency/University: Commerce _____

Division/Department/School: Division of Employment Security _____

Employee Name: Shonda Pulliam _____ Social Security No. XXX-XX-XXXX

Personnel Number: _____

Position Classification: Processing Assistant IV _____

GROSS EARNINGS

Calculate earnings of the employee by each month listing the number of work days to be paid and the total amount of payment for the month. Back pay shall include any across the board compensation that would have been included in the employee's regular salary, including one time "bonuses", and eligible longevity pay. Back pay shall include payment for all holidays that the grievant would have been paid for, although it does not include any holiday premium pay. List the grand total payment due to the employee under Total Gross Earnings.

	<u>Month/Year</u>	<u>Days</u>	<u>Amount</u>
From: _____	_____	_____	_____
Month/Day/Year	_____	_____	_____
To: _____	_____	_____	_____
Month/Day/Year	_____	_____	_____
** see attached settlement agreement **	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

(*Please attach additional sheet if necessary)

TOTAL GROSS EARNINGS

_____ Amount

1 |

INTERIM INCOME

This gross pay amount shall be reduced by any interim income and/or unemployment compensation received by the employee during the specified period. Earnings derived from approved secondary employment which the employee received prior to and/or during the specified period will not be deducted from the gross earnings amount. All applicable state and federal withholding taxes shall be paid from the reduced gross earnings.

Unemployment Compensation (untaxed)

From _____ to _____
Month/Day/Year Month/Day/Year Amount

(*Attach statement from Employment Security Commission)

Other Employment (except secondary employment that was approved prior to dismissal)

Company Name _____
From _____ to _____
Month/Day/Year Month/Day/Year Amount

Company Name _____
From _____ to _____
Month/Day/Year Month/Day/Year Amount

Company Name _____
From _____ to _____
Month/Day/Year Month/Day/Year Amount

TOTAL INTERIM INCOME _____
Amount

TOTAL EARNINGS CALCULATION

The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due. Reduce gross earnings by interim income.

TOTAL GROSS EARNINGS _____
Amount

TOTAL INTERIM INCOME _____
Amount

GROSS DIFFERENCE TO BE PAID _____
Amount

ADDITIONAL SETTLEMENT COSTS

Attorney Fees: \$4,636.50
Compensatory Damages: _____
Punitive Damages: _____
Other: \$11,343.50

Mark one of the following:

- ☒ I certify that the above statement represents my earnings for the periods as shown above.
☐ I certify that I did not have any earnings to report.

Sherida Pulliam 4/15/16
Employee Date

W.2B 4/24/16
Authorizing Agency Official Date

C. Neal Alexander, Jr. 4/26/16
State Human Resources Director Date

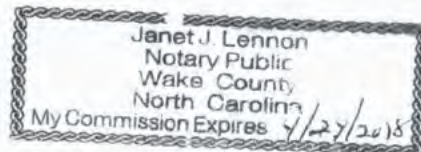
Andrew T. Heath 5/4/16
State Budget Director Date

Sworn to and subscribed before me
this 15th day of April, 2016

Janet J. Lennon
Notary Public

My Commission Expires: 4/24/2018
Date

Seal:



PD-14 Submitted by: Lynn Floyd
Printed Name Date